



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hallmark Packaging Products, Inc.

File: B-232218

Date: October 25, 1988

DIGEST

1. Protester who fails to show that specifications are unduly restrictive has not met its burden where the contracting agency has made a prima facie showing that the specifications are necessary in order to meet its minimum needs.
2. Protest that solicitation's commercial item description test requirement is unduly restrictive of competition is denied where the requirement reasonably reflects the contracting agency's minimum needs. The contracting agency's responsibility for determining its needs includes determining the type of testing necessary to ensure product compliance with specifications, and the General Accounting Office will not question such a determination absent a clear showing that it is arbitrary or capricious.

DECISION

Hallmark Packaging Products, Inc., protests as unduly restrictive the specifications under request for proposals (RFP) No. 2FYS-BN-88-0009-N, issued by the General Services Administration (GSA), for a 2-year requirements contract to supply three National Stock Numbers (NSN) under 20 different line items. Two of the NSN's represent medium duty plastic bags and one NSN represents a heavy duty plastic bag.

We deny the protest.

The RFP required that the bags be manufactured in accordance with commercial item description (CID) A-A-1668C. This CID, entitled "Bag, Plastic, General Purpose," states that: "these bags are to be used primarily as garbage bags and as liners for office trash cans and outdoor trash cans." The CID specifies that the bags must meet, along with other

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requirements, a tear resistance test as specified in ASTM D 1922, an industry standard commonly referred to as the Elmendorf tear test. The bags are being procured for the GSA Stock Supply System for distribution on request to various end user agencies including the Navy, the Forest Service and the National Parks Service.

Hallmark, a producer of high density polyethylene (HDPE) bags, took exception in its proposal to the requirement that the bags comply with CID A-A-1668C; instead, Hallmark offered to supply bags which comply with CID A-A-2299A.^{1/} This latter CID states that the "bags are primarily used as garbage bags and trash can liners for garbage, wet trash and office trash," contains no reference to outdoor use, and specifies a tear resistance level for medium and heavy duty bags which is far below the level required under CID A-A-1668C.

The crux of Hallmark's protest is that HDPE bags which comply with CID A-A-2299A have been unfairly excluded from the solicitation, and that they can perform as well as LDPE and LLDPE bags, at a lower cost. Therefore, Hallmark asserts that by using CID A-A-1668C, particularly with respect to the imposition of its tear resistance requirement, GSA has overstated its minimum needs and unreasonably restricted competition.

The determination of minimum needs and the best method of accommodating those needs are primarily the responsibility of the contracting agencies. We have recognized that government procurement officials, since they are the ones most familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual minimum needs unless there is a clear showing

^{1/} HDPE bags are a relatively recent development which permits the manufacture of plastic bags that are significantly thinner, and therefore use less resin, than the originally developed low density polyethylene (LDPE) bags, or its successor, currently the most frequently commercially used, linear low density polyethylene (LLDPE) bags. Neither CID requires a particular type or thickness of material. However, CID A-A-2299A was specifically developed for HDPE bags and, therefore, includes a lower tear resistance requirement, intended for applications where tear resistance is not a significant consideration.

that the determination has no reasonable basis. Ray Service Co., 64 Comp. Gen. 528 (1985), 85-1 CPD ¶ 582.

When a protester challenges a specification as unduly restrictive of competition, the burden initially is on the procuring agency to establish prima facie support for its contention that the restrictions it imposes are needed to meet its minimum needs. But, once the agency establishes this prima facie support, the burden shifts to the protester to show that the requirements complained of are unreasonable. Honeywell Inc., B-230224, June 14, 1988, 88-1 CPD ¶ 568.

GSA states that these bags are being obtained for use by agencies which have a need for bags with a high tear resistance, primarily because of outdoor uses for the bags. GSA points out that the Forest Service and the Park Service use the bags for outdoor waste collection, including twigs and branches, which subject the bags to numerous punctures and associated high tear stress. Various agencies use the bags in remote locations as liners for outdoor trash cans where the bags are frequently dragged along the ground for disposal at other locations. The Navy uses the bags for disposal of shipboard waste, with frequent dragging of the bags along ships' decks and up stairs prior to disposal. In all of these situations, while both HDPE and LLDPE bags are likely to be punctured by their contents, the viability of the bags is dependent on its degree of resistance to further tearing from the puncture opening. A bag with high tear resistance continues to contain its load since the puncture opening remains small. However, once a bag with low tear resistance is punctured, the hole expands or runs, with the probable result that the bag's entire contents will be spilled. In view of the intended end user applications, we find that GSA has established that it has a reasonable basis to require a plastic bag with a high tear resistance.

In order to establish tear resistance, CID A-A-1168C requires that the bag pass the Elmendorf tear test at a high level. While Hallmark contends that its bags have high tear resistance, in essence it concedes that its bags cannot pass this test. In any event, Hallmark's bags were, in fact, tested under this solicitation, and failed the tear resistance test. In this regard, we have held that a contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to insure product compliance with the specifications. Lunn Industries, Inc., B-210747, Oct. 25, 1983, 83-2 CPD ¶ 491. Our Office will not question a determination that certain testing is necessary absent a clear showing that the determination was arbitrary or

capricious. Janke & Co., Inc., B-225710.2 et al, Feb. 17, 1988, 88-1 CPD ¶ 155.

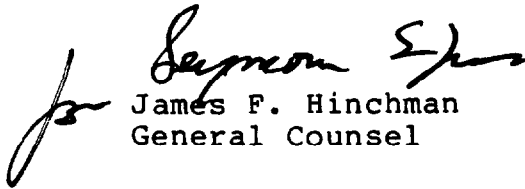
While Hallmark questions the validity of the Elmendorf tear test and disputes the need for its utilization, this constitutes mere disagreement with the agency concerning the best method to determine compliance with the specifications. We find nothing objectionable in GSA's use of a recognized industry standard for testing tear resistance, and Hallmark's disagreement with GSA's determination is not sufficient to establish that the test requirement is unreasonable. Rezcorp, B-230260, June 14, 1988, 88-1 CPD ¶ 569. In our view, Hallmark has not submitted any evidence which establishes that either the tear resistance requirement or test are unreasonable. Hallmark's primary argument is that it has supplied its HDPE bags to many of the user agencies in question, primarily under GSA's New Item Introductory Schedule (NIIS), and that these users have been satisfied with the bags.^{2/} Hallmark also points out that it is experiencing high demand for its product from numerous government agency users. However, this does not establish either that the bags are suitable for the uses contemplated under this solicitation, or that the application of CID A-A-1668C is an unreasonable way in which to achieve the desired tear resistance strength.

In this regard, we note that GSA also purchases plastic bags for its Stock Supply System using CID A-A-2299A for end user application where tear resistance is not a critical requirement. In these procurements, GSA deletes even the lower CID A-A-2299A tear resistance tests for medium and heavy duty bags. User agencies may order these bags from the GSA Stock System if the bags meet their requirements. GSA last issued a solicitation using CID A-A-2299A on January 6, 1988. However, we note that Hallmark's product samples failed the impact resistance and tensile strength tests for 13 of the 14 NSN's under that solicitation. GSA indicates that it plans to continue to procure plastic bags using CID A-A-2299A, for end user application where high tear resistance is not necessary.

^{2/} The NIIS is a non-mandatory source used to introduce new products, under which GSA does not determine product specifications in relation to any particular need. However, unlike the NIIS, items acquired for GSA's Stock Supply System are required to comply with specifications which are designed to insure product suitability and fitness for intended use.

Hallmark has not shown that the high tear resistance requirement and the use of a tear resistance test to insure compliance with this requirement is arbitrary or unreasonable in view of the proposed uses for the plastic bags. Moreover, we have previously recognized, with respect to the same type of plastic bag procurement by GSA, that in view of similar intended product usage, the agency could reasonably exclude from consideration bags which had a low tear resistance. Quality Bag, Inc., B-218547, July 1, 1985, 85-2 CPD ¶ 6.

The protest is denied.

James F. Hinchman
General Counsel